Supreme Court, U. S.
FILED
FEB 15 1980
MICHAEL RODAK, JR., CLERK

In the

Supreme Court of the United States

October Term 1979

No. 79-1265

JOSEPH R. CATERINA,

Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA

Respondent.

PETITION FOR A WRIT OF CERTOIRARI TO THE COMMONWEALTH COURT OF PENNSYLVANIA

JOSEPH RALPH CATERINA: Pro Se

202 Kenyon Drive
Peckville, Pennsylvania 18452

JOHN E. V. PIESKI

Suite 800 Penn Security Building
N. Washington at Spruce Street
Post Office Box 1066
Scranton, Pennsylvania 18503

Counsel for Petitioner
if Writ is Granted

February 8, 1980

DUPLI CRAFT PRINTING SCRANTON, PENNSYLVANIA

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No.

JOSEPH R. CATERINA,
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COMMONWEALTH OF PENNSYLVANIA
Respondent.

PETITION FOR A WRIT OF CERTOIRARI TO THE COMMONWEALTH COURT OF PENNSYLVANIA

The petitioner Joseph R. Caterina respectfully prays that a writ of certiorari be issued to review the Opinion and Order rendered in this proceeding on 23 May 1979, by the Commonwealth Court of Pennsylvania.

OPINION BELOW

The opinion of the Commonwealth Court of Pennsylvania, rendered on 23 May 1979, is reported at 43 PA Comwith Rpt 19, 1979. It is reprinted in the appendix hereto.

The Supreme Court of Pennsylvania, in denying a petition for review, wrote no opinion.

JURISDICTION

Following a Hearing held on 12 November 1976 by the Referee for the Commonwealth of Pennsylvania, Department of Labor and Industry the Bureau of Employment Security, a Decision by the Referee was made on 19 November 1976 in which the Decision of the Bureau denying the claimant unemployment compensation benefits as dated 13 September 1976 was AFFIRMED which disqualified him from receiving benefits under the provisions of Section 402(b) (1) of the law, ineligible Voluntary Quit, because he declined a job offer to another civil engineering position. The same AFFIRMATION was rendered 17 February 1977 by the Unemployment Compensation Board of Review and reinstated 26 September 1977 after hearing argument on 7 September 1977 and was appealed on 4 November 1977 in compaint No. 2143 C.D. 1977, which case was heard by Commonwealth Court on 5 February 1979 and the Court Affirmed the Unemployment Compensation's Board of Review Decision in an Opinion dated 23 May 1979 Denying Unemployment Compensation.

A Petition for Allowance of Appeal from said Order was filed 21 June 1979 to the Supreme Court of Pennsylvania No. 459 Allocatur Docket and was denied without an opinion on 2 October 1979. On 10 October 1979 Application For Reconsideration was timely filed and on 19 November 1979 the Supreme Court of Pennsylvania Denied said Application without an Opinion. Those Orders are reproduced in the appendix hereto. This petition for Writ of Certiorari is being filed less than 90 days from the date of the entry of the order denying the motion application for reconsideration. See App. *6 infra*.

The Jurisdiction of this Court is invoked under 28 U.S.C. § 1257 (3), and 28 U.S.C. § 2403 may be applicable.

QUESTIONS PRESENTED

1. Whether under the Fifth Amendment and Section 1 of the Fourteenth Amendment a Registered Professional Engineer has been deprived certain incorporeal professional property rights; in this case his professional ethics; and can the ethics be severed from the profession and if so is not this a governmental interference with the Professional Person's ability to practice his chosen profession as is guaranteed under both the "liberty" and "property" clauses of said amendments.

2. Whether Under the "Due Process Clause" of said Fifth and Fourteenth Amendments the federal and state governments have deprived a citizen of "liberty" or "property" without FAIR PLAY and if acts of Congress and the Courts have abridged the Professional Constitutional Rights of a Registered Professional Engineer; and if in fact said Professional Person has been deprived indirectly by Statutes, Rules and Regulations of his right to pursue his lawful calling, business and profession without governmental interference.

3. Whether a Registered Professional Engineer has in fact been denied "Equal Protection of the Laws" under the Fourteenth Amendment Section 1 whose jurisdiction in this case were the Laws of Pennsylvania and if in fact a Registered Professional Engineer has been deprived his ligitimate rights to Unemployment Compensation Benefits on the basis of his refusal to accept assignment to a position which would require said professional engineer to practice in an area of the profession in which he is not proficient which would violate the Professional Engineer's Code of Ethics.

4. Whether it was the legal intent of the Acts of Congress, the Commonwealth of Pennsylvania and the Civil Service Commission to indirectly force a Registered Professional Engineer to violate his Obligation under Law and Ethics which would in turn violate his rights under the Fifth and Fourteenth Amendments.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Fifth Amendment:

"Nor be deprived of Life, Liberty, or Property without due process of law."

United States Constitution, fourteenth Amendment Section 1:

"No State Shall make or enforce any law which shall abridge the privileges or immunities of citizen of the United States; nor shall any state deprive any person of life, Liberty or Property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws.

Pennsylvania's Professional Engineer Registration Law; 63 PS 148–158, P.L. 913-1 et seq to 913-11, May 1945 as Amended:

"(i) To suspend or revoke the license. . .of any Registered Engineer. . .of violation of the code of ethics of the engineering profession. . .

THE CODE OF ETHICS: It shall be considered unprofessional. . .(8) To attempt to practice in any field of engineering in which the registrant is not proficient.

Chapter 14 Unemployment Compensation Pennsylvania Law 43 PS Sec 802, p. 123:

"Where a worker leaves his employment when he is compelled to do so by legal obligation. . .he is entitled to benffits under the Unemployment Compensation Act."

STATEMENT OF THE CASE

This case; which appears to be the first to arise under the Pennsylvania Professional Engineers Registration Law with regard to the revocation clause of the Code of Ethics wherein the registrant is not to attempt to practice in any field or area of engineering in which the registrant is not proficient; and is centered around the rejection of a second alternate offer of employment by the Federal Employing Agency to an affected federal employee under a Reduction-in-Force (RIF) status wherein the employee states his lack of proficiency and basic knowledge prevent him from accepting the Final Job Offer. The case is further complicated by the jurisdictional limits of the Civil Service Commission and the fact that the Pennsylvania Unemployment Compensation Laws and Procedures prevent the Expanding of the Hearing Record to further clarify the issues. The Fact that no Job Description was given the claimant nor is required to be given him by the Federal Agency at the time of termination prevented the terminated employee from raising the issue while still employed. Ultimately the Commonwealth Court cites the fact that the issue was not raised when the notice of rejection was given to the employer and also that the Claimant failed to sufficiently prove or support his argument at the Referee's hearing. The Referee concludes that the claimant should have tried the offer wherein the terminated employee cites his Obligation Under Law that he can not attempt to practice in an area of non proficiency; thus! the issue pursues.

The Commonwealth Court in their Opinion Cites that the Claimant offered no evidence that described the duties of the proffered job nor did he detail the practical limitations of his prior training or experience, but the court failed to notice that without having received a Job Description at the time of termination it would be impossible to make such comparisons. In the Notes of the Referee's Testimony (NT) page 3 the Claimant states that he was a Registered Professional Civil Engineer doing mostly highway work. The Claimant also stated NT p. 8

that he had some experience and professional education in the first offer; River Basin Planning; and cites two key Graduate Courses to back up his statement. It should be Noted here that the Claimant was only given Grade, Pay and Title as an indication as to what he was being offered at the time; the Final Job Offer entitled: "Coastal and Special Studies" indicates Oceans and a specialized study wherein obviously in light of the above the Claimant stated NT p 8; "Now I have no training, knowledge or experience in the second offer" and he further stated he could not possibly accept because not only didn't he have schooling or experience, but that he had nothing he could related to with regard to the final offer dealing with Coastal and Special Studies. The issue could not have been expressed any clearer when one considers the limited information that the claimant had at that point in time. Item No. 36 Ommissions of the Record (OR) letters 29, 30 August 1977 and Item No. 38 OR letter of 3 September 1977 were submitted to the Unemployment Compensation Board of Review prior to the final hearing and were ignored; said Board had notice of the lack of Job Descriptions prior to their final review Via these letters and should have back-tracked. (Note that on September 3, 1977; nearly fourteen months after termination; the Claimant was first given the Job Description for the jobs offered) The Claimant cited that the Job Description was defective in that while covering both positions offered him the description failed to mention the actual field of civil engineering that the description covered. (It should be also noted that 3 September 1977 was the first time that the claimant had ever received the Job Description for the Job that he held for almost three years) Never having received the description for his original job and just receiving the description for the final job offers at this late date made it impossible for the claimant to have properly argued his position when the referee's Hearing was held, but was in time for the Board of Review to fully consider the issue. All was ignored and a Valid Legal Complaint 2143 CD Nov 4, 1977 was filed and on page No. 8 of said complaint is the proper comparisons that the court claims they need along with amplification of the fact that the employer made no commitment

to train or to educate nor to offer to train or educate in this new area of engineering for the Claimant. The irony of this case is that according to the Unemployment Compensation (UC) Laws of Pennsylvania Employment Provisions 34 § 65.22 Ch. 65 Applicable Rules "Offers of Suitable Work" that regardless of the manner in which the offer is communicated to the empioyee a suitable offer of employment shall include, among other things, (iv) *A description of the duties. . .*In effect according to the Rules of the Game a Suitable Offer of Employment, *inter alia*, was never made to the Claimant. (In the Petition for Allowance of Appeal to the Pennsylvania Supreme Court under IV "Concise Statement of The Case's Material Facts" Item 10 on page 13 the job Description issue was raised; "*The employer never disclosed any job description other than grade, pay and job title and the Employer's pretense was the jobs were identical when in fact two distinct areas of Civil Engineering were involved.*") In light of the lack of a Job Description all else should be "*moot*" in this case. (See Pennsylvania Code Title 34 Labor and Industry 34§65:22) Under the Manual of Operation & Procedures Part III Sec 3 Title 23:615) when the issue was raised at the Referee's Hearing an additional inquiry should have been made to the employer by the Bureau of Employment Security because such evidence must be considered by the Federal Agency if it had not been previously considered by the Federal Agency. The Bureau, Board and Referee failed to act in this regard.

The Referee's decision was originally that the Claimant should have tried but the Unemployment Compensation Board of Review (UCBR) failed to argue this issue in State Court; but instead chose a new argument that the Claimant failed to ascribe to any reservations about his competency. The argument in Court by the UCBR was not the reason the Referee cited nor the UCBR cited two years earlier when they denied the claimant his Unemployment Compensation.

The Claimant is under an ABSOLUTE LEGAL OBLIGATION and PRIORITY OF LAW NOT TO ATTEMPT TO PRACTICE IN AN AREA OF NONPROFICIENCY (See

Sec 151 (1) of The Professional Engineers Registration Law 63 P.S. 148 to 158 P.L. 913-1 et. seq. to 913-11; 1945 May 23); his First Obligation is superior to all other obligations legally. The Claimant based his case on Pennsylvania Case Law (See: 8 PA Comwith 649; 305 A. 2d. 380 Zinman v UCBR 1973) Obligation of Law; Employer can not force employee to violate the Law "Legal Duty Met the Test". All this is to no avail for without the Job Descriptions the Claimant could not have satisfied the reasoning of the Commonwealth Courts and would have had to violate the law inorder to satisfy the reasoning of the Referee and the UCBR. In addition the argument has no merit in the Laws of the Federal Agency (Title 5 Code Of Federal Regulations Part 351-Reduction in Force) and is out of the Jurisdiction for review by the United States Civil Service Commission who failed to comment on the matter, *inter alia*, as raised in the Notes of the Testimony on page 4 & 5 on 30 November 1976 in an Appeal by Joseph R. Caterina as per Decision Number PH35170019; 17 January 1977 from the Philadelphia Field Office.

The results are: that A Registered Professional Engineer has been deprived unemployment compensation benefits because he refused to accept assignment to a position that would require him to practice engineering in an area of engineering in which he is not proficient.

The Claimant has been deprived his professional ethics which is an interference with the Practice of his profession as protected by the United States Constitution.

The Laws, Rules and Regulations in each of the respective Agencys, Bureaus and Courts must be more narrowly defined inorder to afford the proper treatment and the legitimate rights of a Registered Professional Engineer as cited herein.

The original determination denying Unemployment Compensation dated September 13, 1976 was based upon the fact that: "The claimant's position was eliminated however, he declined a job offer to another civil engineer position." This argument has no merit in law in this case because a Registered

Professional Engineer must first be proficient in the area of engineering before attempting to practice and even though he was a civil engineer he was not proficient in the area of engineering in the final offer.

REASONS FOR GRANTING THE WRIT

The decision inclosed following herein has created two significant and novel constitutional problems, both of which are of such magnitude as to warrant plenary review by this court that if reviewed will have immediate vast import with regard to the Health, Safety and Welfare of the General Public and the Preservation and Protection of Property.

1. *A Registered Professional Engineer has been deprived his professional ethics, which in this case is his professional property, and the deprivation of said professional ethics, to say the leasts, is unconstitutional and is violative of the Fifth and Fourteenth Amendments of the United States Constitution.*

2. *A Registered Professional Engineer has been deprived his legitimate rights to unemployment compensation benefits on the basis of his refusal to accept assignment to a position which would require said professional engineer to practice in an area of the profession in which he was not proficient and which would require him to violate the professional engineer's code of ethics.*

The Claimant, A Registered Professional Engineer, has been deprived his professional ethics and professional morals which are his incorporeal professional property as are defined in the Engineers Registration Laws in which the severing of the ethics will force the professional person not to comport to the preestablished standards of conduct which heretofore have been practiced by Registered Professional Engineers.

A Registered Professional Engineer has property rights to practice his chosen profession without government interference and the Governments herein have deprived the Professional Engineer of his ability to practice his chosen profession by severing the ethics from the profession.

The Argument is that one can not sever the ethics from the Professional without interfering with the Professional Person's ability to practice his chosen profession.

The Fourteenth Amendment guarantees an individual the right to engage in any of the common occupations or professions of life, Such a right is both a "liberty" and "property" right protected from state deprivation or undue interference. (Keker v Procunier Cite as 398 F Supp 756, 1975) From these authorities the conclusion is inevitable that the terms life, liberty and property as used in the Constitution were intended to comprehend every right known to the law, which might in any manner become the object of state oppression, and that a Man's Estate in his Profession and the right to the enjoyment of his acquired reputation are as certainly included in the meaning of these terms as his lands and chatels (Dent v W Virginia, 129 US Rpt 114, 9 S CT 231).

The liberty mentioned in the Fourteenth Amendment of the Federal Constitution means not only the right of the citizen to be free from the mere physical restraint of his person, but is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation. (Const Law, 5 US Sup Ct Digest Lawyers Ed, Sec 636 p 557; 14 Amend).

Due process of law does not mean infallible process of law. Constitutional mandates that require federal and state governments to act within the Due Process of Law means that no governmental body, no governmental agency and no governmental officer; state or federal; may deprive a citizen

of liberty or property without obvious elementary principles of fair play. (USCA Amen 5, Due Process of Law) "Due Process of Law is Another Name For Legal, Judicial and Governmental FAIR PLAY". (Const USCA Art V, p 215, T J Norton et seq). This clause preserves to the citizen against action by Congress, against action by the courts; not only the rights enumerated in the Constitution itself, but also those privileges and immunities to which we became entitled through the early adoption and application in America of English Law. (P 241 Supr Ct) "No change in ancient procedure can be made which disregards those fundamental principles. . .which protect the citizen in his private right and guard him against the arbitrary action of government".

"Judicial process and Judical proceedings" are not necessarily synonymous with "Due Process". (152 PA Sup 279, 32 A 2d (1943) 40–49, Pa. Publication Inc. v. Pa. Public Utility Comm., Bell of Pa.)

Right to hold specific private employment and to follow a chosen profession free from unreasonable government interference comes within the "Liberty and Property" concepts of the Fifth Amendment; "property" being the employment and "liberty" being the freedom to practice a chosen profession. (USCA Const Ame 5; cite Fitzgerald v. Hampton-chairman of U.S.Civil Service Com, 467 F 2d 755)

A Person's business, profession or occupation is "Property" within the constitutional provisions as to due process of law and right to liberty and pursuit of happiness (USCA Const, Amend 4, 14) The Right to Pursue a Lawful calling, business or profession cannot be arbitrarily taken away by STATUTE, but no loss of property or violation of right to liberty and pursuit of happiness results from legislature's exercise of right to regulate professions for the protection of society. (USCA Const Amend 5, 14, Lasdon v. Hallishan 36 NE 2d 227, 1941)

The Constitutional Rights of Public Employees; (Public Employment Labor Relations; Werne Vol 3 Chpt 12 -Constitutionality III p 398) c/o Supreme Court Justice Douglas p 400: "The State is always the State, irrespective of its role as employer, and that therefore, it is always limited by the Constitution." (p401) "To Avoid misunderstandings the present point is that, against objection under the First, Fourth or Fourteenth Amendments, the validity of governmental restraint in a public owned place depends on whether government could, under the same conditions and over the same objection, validly impose the same restraint in a similar privately-owned place. It leaves aside claims against land-use controls based on the private owner's property rights under due process of just compensation clauses. (p 404) "We have ruled only that the Constitution requires that the conflict between congressional power and individual rights be accommodated by legislation drawn more narrowly to avoid the conflict". (p 405) "Even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly, stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgement must be viewed in the light of less drastic means for achieving the same basic purpose."

A Registered Professional Engineer can not practice his profession without his conscience together with the feeling and obligation; both of law and conscience; to do right. The Ethics are the guide as to what actions professionally are right and wrong and without his professional ethics the limits and boundaries or morality are eliminated and do not afford the professional persons the norm of conduct or standard, as you may, as to what it is that is proper or improper. In affect the Ethics and the Profession are inseparable in Law and must be contained singularly, as a whole entity when the term Registered Professional Engineer is referred to. The Governments have in affect deprived a Registered Professional Engineer of his Ethics; which most certainly are a part of his Professional Property as protected under the Constitution of the

United States; Via of the Pennsylvania Unemployment Compensation Laws, The Rules of Pennsylvania Appellate Procedure, Title 5 Administrative Personnel Code of Federal Regulations Chpt 1, part 351 Reduction In Force, and the United States Civil Service Rules and Regulations as were applicable herein to this issue. Another words; The System, has prevented and deprived a Registered Professional Engineer of the normal practice of his profession in compliance with his Professional Ethics. Such a deprivation is most certainly Unconstitutional. The Registered Professional Engineer herein was being forced to Practice in an area of Engineering in which he was not proficient which is a violation of the Professional Engineers Code of Ethics merely because the Pay was the same, the location was the same and the general title was the same, but in fact the Professional Engineer had no experience, education or training in a completely new area of engineering nor was he offered any by the employing agency. He Declined employment and properly so for the employer failed to respond to him as a Professional Person and offer him proper tenable employment.

TO REITERATE THE REASONS FOR GRANTING THE WRIT are:

(1) that a Registered Professional Engineer has been deprived his legitimate rights to Unemployment Compensation Benefits on the Basis of his refusal to accept assignment to a position which would require said engineer to practice in an area of the Profession in which he was not proficient, and

(2) that a Registered Professional Engineer has been deprived His Professional Property which in this case is his Professional Ethics and that said deprivation of said ethics is to say the least Unconstitutional and is violative of the Fifth and Fourteenth Amendment of the United States Constitution.

This Court has never had the occasion to assess the Fifth and Fourteenth Amendments with Regard to a Professional Engineers Property Rights and his Ethics. The Engineers Registration Law is one of the better Laws with morality incorporated into it for a very useful purpose. The Code of Ethics is the FAIL SAFE MECHANISM of the Profession of Engineering. Should all else fail the Professional is Bound "Not to Attempt to Practice in an Area of Engineering in which he is Not Proficient". Look around you lately for example: Three Mile Island, Teton Dam Failure, DC-10 fatigue Failures; society is counting on Professional Engineering to prevent these type situations and failures. It is not the Engineered-end-product that is failing but rather it is the Profession of Professional Engineering that is Failing because of circumstances as are emphasized in this case. The issues of this case must be brought to light and corrected for what useful purpose is served to force a Professional Person to practice in an Area of the profession in which he is not proficient.

CONCLUSION

For these various reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

JOSEPH RALPH CATERINA; PRO SE
202 Kenyon Drive
"White Birch Acres"
Peckville, Pennsylvania 18452

JOHN E. V. PIESKI will be Counsel
for Petitioner if Writ is Granted
Suite 800 Penn Security Building
N. Washington Ave. at Spruce Street
Post Office Box 1066
Scranton, Pennsylvania 18503

February 8, 1980

APPENDIX

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

NO. 2143 C.D. 1977. Joseph R. Caterina, *Petitioner* v. Commonwealth of Pennsylvania. Unemployment Compensation Board of Review. *Respondent.*

BEFORE: Honorable James C. Crumlish, Jr., *Judge*, Honorable Roy Wilkinson, Jr., *Judge*, Honorable Glenn E. Mencer, *Judge*, (Panel)

ARGUED: February 5, 1979

OPINION

Opinion by Judge Crumlish, Jr. Filed: May 23, 1979

Joseph R. Caterina here appeals a determination by the Unemployment Compensation Board of Review (UCBR) which denied him benefits under Section 402(b) (1) of the Act.[1]

At issue is whether his reason for refusing an offer of continuing employment rises to the level of a cause of a compelling and necessitous nature which in our law would render him eligible for compensation.

We affirm UCBR.

Caterina had been employed approximately two and one-half years by the United States Army Corps of Engineers when he received notification that, due to a substantial decrease in work load, his job was being abolished effective July 23, 1976. In lieu of separation, he accepted a position with the Corps' River Basin Planning Section. However, on June 15, 1976, the Corps advised him that a revision of its plan for a reduction in force necessitated his being offered another civil engineering position with the Coastal and Special Studies section in lieu of the prior offer. Caterina refused the assignment, thus effectively terminating his employment on July 23, 1976.

On appeal, Caterina contends that he was bound by conscience and by law to decline the second offer because he lacked training and expertise in that particular area of engineering. He refers to his code of ethics as a professional registered engineer, which provides in pertinent part:

> "It shall be considered unprofessional and inconsistent with honorable and dignified bearing for any professional engineer or surveyor:
>
> ". . . .
>
> "(8) To attempt to practice in any field of engineering in which the registrant is not proficient."[2]

Our scope of review is limited to consideration of legal questions and evidentiary support for UCBR's findings of fact. *Hyduchak v. Unemployment Compensation Board of Review*, 35 Pa. Commonwealth Ct. 575, 387 A.2d 669 (1978). Questions of credibility and evidentiary weight are properly left to UCBR which is free to reject even uncontradicted testimony. *Rosenberger v. Unemployment Compensation Board of Review*, 31 Pa. Commonwealth Ct. 455, 376 A.2d 1018 (1977); *Stockdill v. Unemployment Compensation Board of Review*, 28 Pa. Commonwealth Ct. 516, 368 A.2d 1341 (1977).

In this case, UCBR specifically found that Caterina's refusal was prompted by his belief that there was a contract extant between him and the Corps with respect to the first job offer although he knew, as of June 15, 1976, that the original offer had been canceled. In its "Discussion", UCBR expressly rejected Caterina's contention that the second offer was unsuitable[3] because of a lack of expertise.

The record reveals that substantial evidence exists in support of UCBR's findings in Caterina's written refusal of the second offer wherein he set forth the reasons for his refusal and failed to ascribe any reservations about his competency.[4]

Nor has Caterina adduced proof of his lack of proficiency that would, as a matter of law, establish a compelling and necessitous cause for his refusal. Most of the testimony and exhibits offered at the referee's hearing indicated Caterina's belief that he was *better* qualified to accept the first job offer. He offered no evidence that described the duties of the proffered job for which he felt ill-equipped nor did he detail the practical limitations of his prior training and experience, choosing to rely instead on repeated unsupported assertions that he lacked training and experience and that he was unable to "relate" to the second offer.

We must conclude that Caterina has not met his burden of proving a necessitous and compelling cause for his voluntary termination. *See Taylor v. Unemployment Compensation Board of Review*, 474 Pa. 351, 378 A. 2d 829 (1977).

Accordingly, we

ORDER

AND NOW, this 23rd day of May, 1979, the order of the Unemployment Compensation Board of Review in the above captioned case dated September 26, 1977, denying unemployment compensation to Joseph R. Caterina is hereby, affirmed.

James C. Crumlish, Jr., Judge

Footnotes

[1]Section 402 (b) (1) of the Unemployment Compensation Law, Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(b) (1), provides in pertinent part as follows:

"An employee shall be ineligible for compensation for any week—

". . . .

"(b) (1) In which his unemployment is due to voluntarily leaving work without a cause of a necessitous and compelling nature. . .."

[2]Section 151(i) (8) of the Professional Engineers Registration Law, Act of May 23, 1945, P.L. 913, *as amended*, 63 P.S. §161(i) (8).

[3]"Suitable work" is defined in Section 4(t) of the Act, 43 P.S. §753(t).

[4]In a response dated July 21, 1976, Caterina wrote:

"I decline the second offer for the following reasons:

"1. On May 21, 1976 I accepted the First Offer Civil Engineer, Bason Pln. Sec., Pln. Br., Eng. Div. GS-810-09110 $17,523.00 and I feel that a contract exists presently between the Corps of Engineers and myself in the R.I.F (Reduction in Force) active. Also: In reviewing the register I find that I am not being bumped but am just being replaced by another employee with less standings."

Pennsylvania Unemployment Board of Review
Decision & Order

February 17, 1977

Appeal No. B-UCFE-76-3-F-906
Joseph R. Caterina, 202 Kenyon Dr., Peckville, PA 18452

DISCUSSION: The Bureau of Employment Security issued a determination denying benefits to the claimant under Section 402(b)(1) of the Unemployment Compensation Law. The claimant filed an appeal therefrom, and following a hearing at which the claimant appeared and testified, the Referee issued a decision affirming the Bureau's determination under Section 402(b)(1). Thereafter, the claimant filed a further appeal from the Referee's decision.

Section 402(b)(1) of the Law provides that a claimant shall be ineligible for compensation for any week in which his unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature. Since the claimant voluntarily terminated his employment, the burden rests upon him to show cause of a necessitous and compelling nature for so doing. The claimant has failed to meet this burden.

The claimant, a civil engineer, was offered two jobs as a civil engineer with his employer of over two (2) years. The claimant accepted the first offer which was subsequently withdrawn by the employer because of the reduction in force requirements. The claimant was then offered a second job as a civil engineer. This job was in the Coastal and Special Studies Section and the claimant's refusal of this job is at issue.

Section 4(t) defines "suitable work" as "all work which the employe is capable of performing." The claimant argues that the offered job in the Coastal and Special Studies Section was not suitable, i.e., he lacked the training and education necessary to do this job and, therefore, it would be professionally unethical for him to do this job. Based on the few facts before us, we disagree. We believe the claimant could have given the job a "trial period," could have been given the training, and

could have received the education in order to do the job. We do not believe the offered job was unsuitable; in fact, we believe the claimant was capable of performing the offered job. Accordingly, benefits must be denied under Section 402(b)(1) of the Unemployment Compensation Law.

CONCLUSION OF LAW: The claimant is ineligible for benefits under the provisions of Section 402(b)(1) of the Pennsylvania Unemployment Compensation Law.

ORDER: The decision of the Referee is affirmed and benefits are denied.

UNEMPLOYMENT COMPENSATION
BOARD OF REVIEW

Maurice Abrams, Chairman
Joseph J. McAneny, Member
James P. Breslin, Member

Pennsylvania Unemployment Compensation Board of Review
Referee's Decision

17 Sept 1976

Appeal No. UCFE-76-3-F-906
Joseph R. Caterina, 202 Kenyon Dr., Peckville, PA 18452

REASONING: This application for Unemployment Compensation Benefits is based upon a separation from a Federal Employing Agency. In accordance with Chapter 85, Title 5, U.S. Code, Section 8506(a), the findings of the Federal employing agency with respect to the reasons for the termination of an individual's services with that agency are final and conclusive as to any determination upon his entitlement to Unemployment Compensation. Accordingly, the Referee holds that the findings of the federal authorities are binding and, as claimant voluntarily terminated his employment without

cause of a necessitous and compelling nature, he must be disqualified from receiving benefits under the provisions of Section 402(b)(1) of the Law.

ORDER: The decision of the Bureau is AFFIRMED, and claim credit for the weeks ending July 31; August 7, 14, 21 and 28; and September 4, 1976, is DENIED.

REBA O. BOWIE, REFEREE

ORIGINAL NOTICE OF DETERMINATION
(Voluntary Quit)

13 September 1976

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Joseph R. Caterina, 202 Kenyon Dr., Peckville, Pa. 18452

Findings of Fact:

The claimant last worked with U.S. Army Engineer on 7-31-76 and:

Left this employment voluntarily without cause of a necessitous and compelling nature. "The claimant's position was eliminated however, he declined a job offer to another civil engineer position.

DETERMINATION:

Disapproved in accordance with Section 402(b)1 of the Pennsylvania Unemployment Compensation Law,

/s/ H. R. Milford
U. C. Supervisor

Bureau of Employment Security
135 Franklin Avenue
Scranton, Pa. 18503

Office of the
Prothonotary of the Supreme
Court of Pennsylvania
P.O. Box 624 Harrisburg, Pennsylvania 17108

Letter to Mr. Caterina; Pro Se 5 October 1979

No. 459 Allocatur - RE: Caterina, Petitioner v. Com of Pa.
Unemployment Board of Review

This is to advise that the following Order has been endorsed on the Petition for Allowance of Appeal in the above-captioned matter. "October 2, 1979 PETITION DENIED s/ PER CURIAM."

Very truly yours,

/s/ Mildred E. Williamson
Deputy Prothonotary of the Supreme Court

Letter to Mr. Caterina; Pro Se 26 November 1979

No. 459 Allocatur - RE: Caterina, Petitioner v. Com of Pa.
Unemployment Board of Review

This is to advise that the following Order has been endorsed on the Application for Reconsideration in the above-captioned matter: "November 19, 1979 PETITION DENIED s/ PER CURIAM."

Very Truly yours,

/s/ Mildred E. Williamson
Deputy Prothonotary of the Supreme Court